

Mark Anthony Brands Inc. 159 South Jackson Street, 4th Floor, Seattle, Washington 98104

September 26, 2005

Via Email Delivery

Frank Foote
Chief, Regulations and Rulings Division
Alcohol & Tobacco Tax & Trade Bureau
Attn: Notice 41
1310 G Street, N.W.
Washington, DC 20005


Re: TTB Notice Number 41: Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages

Dear Mr. Foote:

Mark Anthony Brands Inc. (“MAB”) submits the following comments on TTB Notice No. 41, *Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages* (“Notice 41”), 70 Fed. Reg. 22,272 (Apr. 29, 2005).¹ MAB appreciates this opportunity to contribute its perspective to this examination of TTB’s labeling and advertising regulations. As the national distributor of mike’s hard lemonade®, mike’s hard cranberry lemonade®, mike’s hard iced tea®, mike’s hard lime™, mike’s light®, and mike’s hard berry™ (collectively “mike’s”), the outcome of TTB’s Notice 41 rulemaking affects MAB’s business. We specifically write about our view that TTB uses an improper methodology to determine carbohydrate content.

MAB is headquartered in Seattle, Washington, and is the national distributor and marketer of mike’s. MAB is owned by a small, privately-held company that first entered the alcohol beverage business as a wine importer over thirty years ago, making mike’s a product of entrepreneurial energy and investment by a small, family-owned business. Its phenomenal

¹ On June 23 TTB extended the deadline for submitting comments to September 26, 2005. See 70 Fed. Reg. 36,359 (June 23, 2005).



success has made mike's the key contributor to MAB and its affiliates. In addition to the approximately 400 people that produce mike's brands at our co-packing facilities, MAB and its affiliates, too, rely on U.S. sales of mike's. Together we directly employ approximately 90 people in the sale and marketing of mike's in the U.S. Moreover, MAB's owner has invested tens of millions of dollars over the past four years in bringing the great taste of mike's to U.S. consumers.

Recently in response to consumer interest in lower carbohydrate alcoholic beverages, MAB has developed a line of products known generally as mike's light®. These products have reduced carbohydrate content as compared to our and industry's standard flavored malt beverage (FMB) products. Organic acids are an important ingredient in our mike's light products, as they reduce carbohydrate content and retain the signature great taste consumers expect from our products.

The concern MAB has relates to the analytical methodology used to determine carbohydrate content. Specifically, TTB's carbohydrate testing methodology erroneously counts organic acids as carbohydrates. This incorrect method can result in approximately a four fold overstatement of the carbohydrate content in a beverage such as mike's light. As a matter of science, organic acids are not carbohydrates, regardless of the methodology employed by TTB. This could result in labeling and advertising that falsely overstates the number of carbohydrates in a product to a material degree. Put another way, use of this analytical methodology appears to suppress truthful information in favor of false information. Moreover, the fact that this false information may arise from a test announced by TTB does not render the information truthful or accurate; it simply highlights the fact that the testing methodology is erroneous. TTB never

afforded the public an opportunity to comment on the analytical testing procedure it adopted. Fortunately, Notice No. 41 provides such an opportunity for comment.

In closing, Mark Anthony Brands urges TTB to pursue adoption of an analytical method that accurately determines carbohydrate content. Just as there was a recognition that the traditional "carbohydrate by difference" method had to be adjusted to account for the ethyl alcohol content (the traditional method counts ethyl alcohol as carbohydrate), TTB must revise the current method so it does not count organic acids as carbohydrates.

Mark Anthony Brands appreciates this opportunity to provide comments on Notice 41 and looks forward to working with TTB to identify a suitable analytical method to determine the carbohydrate content of flavored malt beverages.

Respectfully submitted,



Stephen Goodridge
Technical Director, Quality Assurance and Product Development